

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

LINDA KINCHELOW
Plaintiff

V.

NO. 2:97CV47-B-B

ROBINSON PROPERTY GROUP, L.P.
d/b/a HORSESHOE CASINO AND HOTEL
Defendant

MEMORANDUM OPINION

This cause comes before the court upon cross-motions for summary judgment. The court has duly considered the parties' memoranda and exhibits and is ready to rule.

FACTS

The plaintiff was employed by the defendant Horseshoe Casino as a human resources representative. She was terminated from her employment on or about May 6, 1996, for the stated reason of falsification of company documents. The plaintiff asserts that she was terminated in violation of the Family and Medical Leave Act ("FMLA" or "the Act"), codified at 29 U.S.C. §§ 2601 et seq.

On April 11, 1996, the plaintiff called in sick to work. The next day, the plaintiff again called the defendant to state that she had been in an automobile accident the previous day and that she needed to take a week of sick leave to recover. The plaintiff subsequently submitted a sheet signed by a physician entitled "After Care Instructions" which indicated that the plaintiff was suffering from back and neck injuries and that she should be excused from work through April 19. On April 19, the plaintiff notified the defendant that she needed another week off, and she submitted another "After Care Instructions" sheet which indicated that she needed to be excused from work through April 26.

On April 20, the defendant received a copy of the accident report, and noticed that the plaintiff was not listed as being involved in the accident. When the plaintiff notified the

defendant on April 26 that she needed a third week of leave, the defendant provisionally granted the plaintiff's request, but asked for additional documentation from the plaintiff that she had been involved in an accident. On May 6, the plaintiff returned to the casino and presented the defendant with a document that was purportedly a corrected accident report. The defendant found this document to be insufficient, as there was little evidence to indicate that the report had been corrected by the Memphis Police Department.¹ The defendant did inform the plaintiff that it would accept the corrected report if the plaintiff could provide some evidence that the Memphis Police Department had in fact made the corrections. The plaintiff never provided any other documentation. When the defendant later visited the records office of the Memphis Police Department, the report on file had not been changed to indicate that the plaintiff was involved in the accident. The plaintiff was terminated for the stated reason of falsifying her basis for the leave of absence.

LAW

On a motion for summary judgment, the movant has the initial burden of showing the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 91 L. Ed. 2d 265, 275 (1986) ("the burden on the moving party may be discharged by 'showing'...that there is an absence of evidence to support the non-moving party's case"). Under Rule 56(e) of the Federal Rules of Civil Procedure, the burden shifts to the non-movant to "go beyond the pleadings and by...affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" Celotex Corp., 477 U.S. at 324, 91 L. Ed. 2d at 274. That burden is not discharged by "mere allegations or denials."

¹ The "corrected" report contained a plain white sheet on which two statements had been hand-written. One statement was supposedly written by the passenger in the plaintiff's car. The other statement was purportedly written by a PST Fowler of the Memphis Police Department, who stated that on April 16, 1996, he had made a correction to the accident report. The defendant asserts that this statement was insufficient as it was not written on Memphis Police Department letterhead.

The attached report was changed from the original in that it listed the plaintiff as the driver of one of the vehicles. However, there is nothing to indicate that this change was made by the Memphis Police Department, other than the aforementioned statement written on plain paper.

Fed. R. Civ. P. 56(e). All legitimate factual inferences must be made in favor of the non-movant. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 91 L. Ed. 2d 202, 216 (1986). Rule 56(c) mandates the entry of summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp., 477 U.S. at 322, 91 L. Ed. 2d at 273. Before finding that no genuine issue for trial exists, the court must first be satisfied that no reasonable trier of fact could find for the non-movant. Matsushita Elec. Indus. v. Zenith Radio Corp., 475 U.S. 574, 587, 89 L. Ed. 2d 538, 552 (1986).

The FMLA allows qualified employees up to twelve weeks of leave per year for a "serious health condition" which renders the employee unable to perform the functions of the employee's position. 29 U.S.C. § 2612(a)(1)(D). "Serious health condition" is defined as an illness, injury, impairment, or physical or mental condition that involves (a) inpatient care in a hospital, hospice, or residential medical care facility, or (b) continuing treatment by a health care provider. 29 U.S.C. § 2611(11). An employer may require that a request for leave based upon a serious health condition be supported by a certification issued by the health care provider. 29 U.S.C. § 2613(a). To be sufficient, such certification must state (1) the date on which the serious health condition commenced; (2) the probable duration of the condition; (3) the appropriate medical facts within the knowledge of the health care provider regarding the condition; and (4) a statement that the employee is unable to perform the functions of the employee's position. 29 U.S.C. § 2613(b).

The defendant asserts that it granted the plaintiff all of the leave which she requested, and then terminated her employment in accordance with the employee handbook for falsifying the reason for the medical leave. It is certainly not unreasonable under the circumstances for the defendant to doubt whether or not the plaintiff was involved in an accident. However, even if we assume that the plaintiff was injured as a result of an automobile collision, the plaintiff cannot maintain a viable claim under the FMLA because she failed to provide appropriate medical certification to the defendant.

From the evidence presented by the parties, it is clear that the plaintiff failed to provide the appropriate certification to support her request for medical leave. The "After Care Instructions" submitted by the plaintiff simply indicate back and neck injuries by checking the appropriate box, and state that the patient is to be excused from work for medical reasons for certain days. The medical forms do not state the date upon which the condition commenced, nor do they provide any medical facts regarding the plaintiff's condition. Furthermore, other than to state that the plaintiff should be excused from work for a week, the forms do not state that the employee is unable to perform the functions of her job. To state that the employee should be excused from work is not the same thing as saying that the employee cannot perform the functions of her job. Since the plaintiff failed to provide appropriate certification of her need for medical leave as required by the Act, she cannot maintain her claim for violation of the FMLA.

The FMLA is not difficult to comply with--the plaintiff simply failed to do so. It is not the responsibility of the employer to investigate the employee's need for medical leave; rather it is the employee's duty to provide the certification required by the Act. The burden on the employee is not great, but certain minimal information may be required by the employer before the employee may invoke the protection of the Act. The plaintiff failed to provide the minimal documentation necessary to support her claim for medical leave, and thus the court finds that the defendant is entitled to summary judgment.

CONCLUSION

For the foregoing reasons, the court finds that the defendant's motion for summary judgment should be granted. An order will issue accordingly.

THIS, the ____ day of March, 1998.

NEAL B. BIGGERS, JR.
UNITED STATES DISTRICT JUDGE